

**Commonwealth of Kentucky
Workers' Compensation Board**

OPINION ENTERED: November 8, 2013

CLAIM NO. 200067339

MARK JORDAN

PETITIONER

VS. **APPEAL FROM HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE**

EAST KY POWER COOP,
ALTERNATIVE CONCEPTS SERVICE,
and HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION AND ORDER
AFFIRMING**

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

ALVEY, Chairman. Mark Jordan ("Jordan"), *pro se*, seeks review of the opinion and order rendered May 24, 2013 by Hon. Jeanie Owen Miller, Administrative Law Judge ("ALJ"), resolving a post-settlement medical fee dispute in favor of East Kentucky Power Cooperation ("EKP") by finding his neurogenic bladder condition unrelated to his September 15,

2000 low back work injury. The ALJ also found neither the mental health treatment provided by Beaumont Behavioral Health nor certain prescriptions were reasonable or necessary for the care and treatment of Jordan's work injury. No petition for reconsideration was filed by either party.

On appeal, Jordan argues the evidence compels a contrary result. He also requests the Board make factual determinations regarding MRI reports and opinions of several physicians. He also accuses the ALJ of failing to "use my doctors (sic) notes to rebut the Defendant doctors. That's showing favor to one side, if that evidence of the other isn't entered."

Jordan fell on a concrete floor striking his back against a valve stem on September 15, 2000 while working as a combustion turbine operator. A Form 110-I settling the claim by agreement was approved on August 17, 2004 by Hon. Sheila C. Lowther, Administrative Law Judge, listing Jordan's diagnoses as a severe depressive disorder and category II lumbar spine injury. The form provided three impairment ratings varying from 10% to 100%. The agreement reflects Jordan would be paid \$900.00 per month beginning September 1, 2004 and continuing for the rest of his life. The agreement also reflects Jordan is entitled to future

medical benefits subject to various conditions including the right to reopen concerning the reasonableness and necessity of all treatment.

EKP filed a motion to reopen and medical fee dispute on August 4, 2011 contesting the compensability of ongoing mental health treatment with Nancy Pearson, ARNP, of Beaumont Behavioral Health; urological treatment; pain management with Ballard Wright, MD, PSC; and treatment for gout or pseudogout.¹ EKP's motion to reopen was sustained and the matter was referred to the ALJ for final adjudication. Ballard Wright M.D., Beaumont Behavioral Health and Drema Jordan were joined as parties.

At the March 7, 2012 benefit review conference and at the March 27, 2013 hearing, the parties identified the following contested issues: work-relatedness/causation of neurogenic bladder; unpaid or contested medical expenses; compensability of Beaumont Behavioral Health treatment; denial of Viagra; and the reasonableness and necessity of the prescription medication: Methadone, Ditropan, Viagra, Klonopin, Seroquel, Lamictal, Latuda, Nuerontin, Zyprexa and Prozac.

¹ EKP filed a supplemental motion to reopen and medical fee dispute challenging Jordan's request for reimbursement for a decade of home care services provided by Drema Jordan, his wife, in the amount of \$305,760.00. However, the claim was later withdrawn.

Jordan testified by deposition on February 2, 2012 and at the hearing held March 27, 2013. He has not worked since the 2004 settlement and currently draws Social Security disability benefits. At the deposition, Jordan described the symptoms he attributes to the 2000 work injury. Jordan stated his "bladder is shut down because of this work incident." He has erectile issues and experiences testicular pain. Jordan experiences low and mid back pain, swelling in his legs, and numbness in his feet. Jordan testified he is depressed, stressed, and hears voices.

Jordan treats with Dr. Freddie Terrell for his urinary and erectile conditions and is prescribed Viagra, Ditropan, Neurontin and catheters. He self-catheterizes three to four times per day. He sees Ms. Pearson at Beaumont Behavioral Health who prescribes Prozac, Progentin, Seroquel, and Lamictal for his mental health issues. He treats with Dr. Flinchum of Ballard Wright Clinic for pain management, and is prescribed Methadone and Senna. Until recently, his designated workers' compensation physician was Dr. McGinnis, whom he saw every four months.

Jordan submitted voluminous treatment records from 2000 to the present. Diagnostic studies between 2000 and March 14, 2011, demonstrate an anterior wedge compression deformity of L1; diffuse annular bulge at L3/L4 and L4/L5;

and moderate focal posterior central disc herniation at L5/S1 without nerve root entrapment or spinal stenosis. The August 6, 2012 lumbar x-ray revealed anterior compression deformities of the T12 and L1 vertebral bodies; no evidence of acute fracture or vertebral body subluxation; and otherwise unremarkable examination. Finally, a March 14, 2011 lumbar spine MRI revealed findings unchanged since 2000.

In November 2000, Dr. Robert Toon, an orthopedic surgeon, diagnosed Jordan with mid/low back pain and coccygodynia without sciatica but with sexual dysfunction; probable fresh fractures at T12 and L1; small disc herniation and degenerative disc disease at L5-S1. In December 2000, Dr. Phillip Tibbs, a neurosurgeon, concluded a lumbar spine MRI showed a small central herniated nucleus pulposus at L5-S1 but no neural compression. He also prescribed Jordan a trial of Viagra for his sexual dysfunction. An April 2001 MRI showed a L5-S1 degenerative disc but no neural impingement. Dr. Tibbs declined to recommend surgery.

Jordan also filed records from Dr. Jeffery McGinnis and Dr. Jeffrey Popham. In a letter dated August 11, 2011, Dr. McGinnis stated as follows:

My patient, Mark Jordan, is totally disabled because of a broken back suffered at work on September 15, 2000. His problems from that injury include severe back pain, lower extremity weakness, neurogenic bladder, erectile dysfunction, and severe depression. He is on multiple medications because of these problems. He is also followed by multiple specialists including an urologist, a psychiatrist, and a pain management physician.

Jordan filed records from Dr. Terrell, his urologist, from 2001 through 2011. Dr. Terrell testified by deposition on January 20, 2012. He treated Jordan for neurogenic bladder, erectile dysfunction, incontinence, bladder instability, impotence, kidney cyst, orchialgia, and scrotal varicocele. He prescribed Ditropan and catheters for the neurogenic bladder condition; Viagra and a pump for the erectile dysfunction; and Neurontin for the orchalgia. He performed urodynamics testing on May 8, 2002. In a letter dated February 20, 2013, Dr. Terrell stated as follows:

Mr. Mark Jordan has been a patient of mine since 2001. He sustained nerve damage following an injury to his lower back while at work. The injury resulted in nerve damage to his urinary bladder for which he uses Ditropan and catheters. He also developed erectile dysfunction after the accident and requires Viagra daily. He (illegible) Neurontin for chronic inguinal pain. Therefore, all medicines including catheters that are prescribed by me are workers comp related.

Dr. Terrell diagnosed Jordan with a neurogenic bladder, and secondary diagnoses of orchialgia, renal cyst and scotal varicocele. He stated orchialgia, neurogenic bladder and erectile dysfunction are "probably," and the scrotal varicocele "may or may not be" related to the September 15, 2000 work injury. He determined a renal cyst is not work-related. He prescribed Ditropan and doing "in and out catheterization" for the bladder condition. Dr. Terrell stated neurogenic bladder is confirmed objectively by physical examination and urodynamics testing. Dr. Terrell confirmed he treats Jordan with annual follow-ups and prescriptions of Oxybutynin, Ditropan, Viagra and Neurontin.

Jordan also filed the records of Dr. Donald George and Martha Pearson, ARNP. Ms. Pearson testified by deposition on December 14, 2011. Jordan initially received psychiatric treatment from Dr. George who diagnosed major depression in 2002 and prescribed Zoloft and Flaviil. In 2003, Dr. George opined Jordan would be unable to return to work. Following Dr. George's retirement, Jordan began treating with Ms. Pearson, a psychiatric nurse practitioner, who diagnosed interchangeably bipolar, not otherwise specified, and/or mood disorder, not otherwise specified. She primarily prescribed Lamictal, Seroquel, Prozac, Zyprexa and Latuda. In the most recent note dated January 30, 2012,

Ms. Pearson diagnosed mood disorder and bipolar, and prescribed Latuda, Seroquel, Lamictal, and Prozac. In a letter dated August 4, 2011, Ms. Pearson indicated Jordan "came to me due to a work-related injury related to mental health and has been seeing me regularly since due to that injury." When asked whether Jordan's current psychiatric conditions are related to his work injury, Ms. Pearson answered in the affirmative, stating "I think every aspect of Mr. Jordan's life is related to his injury."

Ballard Wright, MD, PSC, The Pain Treatment Center, by counsel, filed treatment records from 2008 to 2011. On September 12, 2008, Dr. Flinchum diagnosed low back pain, limb pain, lumbar facet arthropathy, degenerative disc disease and degenerative joint disease of the lumbar spine, and gait abnormality. He prescribed Senokot and Methadone.

EKP filed the July 5, 2011 psychiatric report of Dr. Robert Granacher, who also testified by deposition on February 9, 2012. Dr. Granacher noted Ms. Pearson had prescribed Latuda, Seroquel, Lamictal, Prozac and Cogentin. In addition, Jordan was also prescribed Methadone Nexium, Flexeril, Klonopin, Pramipexole, Ditropan, Viagra, Gabapentin, and urinary catheters. Dr. Granacher diagnosed "mood disorder, currently unspecified, due to confounding

features." He stated, "In my judgment, Ms. Pearson has modified the treatment plan and she is no longer treating him for the psychiatric diagnosis attributable to the original work injury." He also noted Jordan exhibited severe symptom magnification, and has been Methadone dependent since at least 2002, "and therefore probably has a substance-induced mood disorder currently."

Dr. Granacher concluded the current psychiatric treatment by Ms. Pearson is inconsistent with the original diagnosis related to his work injury. Dr. George had previously diagnosed severe depressive disorder and Dr. Shirazi had diagnosed major depression without psychotic features secondary to chronic pain and alcohol abuse. Ms. Pearson has changed the diagnosis and her treatment plan now deviates considerably from the original diagnosis and treatment plan. Dr. Granacher stated the medications currently prescribed by Ms. Pearson may be medically necessary and appropriate if Jordan has bipolar illness, which he deemed is unrelated to the original work injury.

Dr. Granacher testified at his deposition Jordan has a mood disorder, unspecified, due to confounding features of the pharmacology of his current treatment and/or hallucinosis unrelated to his original work injury. Likewise, he concluded the combination of medication either

exacerbates or causes urinary dysfunction, and Prozac is "just notorious" for causing sexual dysfunction. Dr. Granacher testified the prescriptions of Zyprexa, Seroquel, Lamictal and Latuda are not work-related, while the Prozac, Remeron and Buspar are work-related. Dr. Granacher generally agreed with the opinion of Dr. Travis, and opined Methadone is not the proper pain treatment for a back sprain/strain. Dr. Granacher recommended a complete revision of the psychiatric treatment plan, and Jordan be detoxified from substances, including Methadone, on an in-patient basis followed by out-patient care.

EKP also submitted the April 26, 2011 report of Dr. Ellen Ballard who reviewed Jordan's list of prescription medication and determined the Clonazepam, Colchicine, Ventolin, and Ceftin are not work-related. Likewise, she concluded the urological medications of Methadone, Ditropan, Viagra and Gabapentin are not work-related since diagnostic testing does not explain his neurogenic bladder complaints. Finally, Dr. Ballard stated the Methadone and Nexium are work-related to treat his pain.

EKP submitted the June 10, 2011 report of Dr. Russell Travis, who reviewed the medical records, including September 27, 2000; November 6, 2000; and March 14, 2011

lumbar spine MRI reports and corresponding digital photographs. Specially, Dr. Travis found:

These images demonstrate the astoundingly normal MRIs on [Jordan] . . . and it absolutely astounds me that this gentleman gets the amount of opioids and other medications that he receives based on a lumbar strain and sprain which occurred on 9/15/2000 with three subsequently normal lumbar MRIs and no examination which has listed any objective findings. In fact, it doesn't appear that this gentleman has had a neurological examination in several years.

Likewise, he stated the three MRIs do not evidence a cause of low back pain, lower extremity pain, neurogenic bladder or bowel dysfunctional. He found none of Jordan's problems directly related to the lumbar sprain/strain occurring on September 15, 2000, including his bowel and bladder conditions. Dr. Travis concluded Jordan suffers from significant psychiatric problems, including depression, anxiety and possibly schizophrenia with hallucinations, which are unrelated to the 2000 lumbar strain/sprain and for which methadone is not the appropriate treatment. He also concluded Jordan's low back and leg pain are not the cause of his current complaints. Finally, Dr. Travis opined the following medications are not related to the 2000 lumbar sprain/strain work injury: Clonazepam, Colchicine, Nexium, Mirapex, Ventolin, Ceftin, Methadone, Seroquel, Lamictal,

Fluoxetine/Prozac, Gabapentin/Neurontin, Benztropine/Cogentin, Famotidine/Mylanta, Ditropan/Oxybutynin and Viagra. Dr. Travis recommended Jordan be carefully weaned from Clonazepam and Methadone.

The reports of two university evaluators, Drs. Tim Allen and Joseph Zerga, were also submitted into evidence. Dr. Allen's August 16, 2012 report reflects a diagnosis of major depressive disorder, recurrent, moderate; chronic back pain, overmedicated. He noted Jordan's current medication regime of Methadone, Viagra, catheters, Nexium, Pepcid, Seroquel, Cogentin, Ditropan, Lamictal, Prozac, Neurontin, Klonopin, Mirapex, Senna and AndroGel. Dr. Allen stated Jordan developed an exacerbation of pre-existing major depression after his September 15, 2000 work injury. He also found Jordan overmedicated with an antidepressant, mood stabilizer, two anti-psychotics, a sedative, and other mood altering medications including Methadone and Neurontin. Dr. Allen recommended a dramatic tapering of numerous medications, and found he will likely require permanent treatment with an antidepressant. He noted Amitriptyline and Cymbalta would be most beneficial for chronic pain. Pursuant to the 2nd and 5th Editions of the American Medical Association, Guides to the Evaluation of Permanent

Impairment, Dr. Allen assessed a 5% impairment rating, attributing 2.5% to a pre-existing condition.

The July 5, 2012 report of Dr. Zerga, a neurologist, reflects Jordan had no objective neurological findings upon examination other than self-reported limitations. Dr. Zerga administered an EMG/NCV which yielded normal results, and did not demonstrate any evidence of peripheral neuropathy, entrapment neuropathy or radiculopathy. After summarizing the complex diagnostic criteria for a neurogenic bladder and the testing required to confirm such condition, Dr. Zerga concluded he was "not really sure" whether Jordan has a neurogenic bladder. He noted Jordan's particular case is complicated by his significant psychological overlay and numerous medications which can influence bladder function.

Regardless, Dr. Zerga concluded "[t]he type of trauma he suffered would not have caused trauma to the nerves at the bottom of the spine" leading to bladder problems. He further doubted the existence of a temporal relationship between the September 2000 work event and the bladder dysfunction based upon the medical records and diagnostic studies. Dr. Zerga noted there are no abnormal objective findings regarding Jordan's low back or neurogenic bladder, citing to his negative MRI scans. Dr. Zerga

indicated he would taper Jordan off of Methadone. He would also stop the Neurontin. The other medications he found unrelated to the work injury. Dr. Zerga recommended non-steroidal anti-inflammatories for his low back, as well as increased activity.

At his deposition, Dr. Zerga testified Jordan had a lumbosacral strain due to the work incident. Dr. Zerga agreed with Dr. Allen's recommendation of tapering off numerous medications, beginning with Methadone, which he suggested be done on an in-patient basis. Dr. Zerga testified Jordan's erectile dysfunction is attributable to his medications, particularly Methadone, and his alcohol use. Likewise, he stated the September 2000 work event did not cause Jordan's erectile dysfunction or low testosterone.

In her May 24, 2013 opinion and order, the ALJ determined as follows:

The undersigned has reviewed the volumes of medical records this case has generated. Most of these records were forwarded to the University evaluators for their review. The undersigned finds Dr. Zerga's opinion is the most persuasive as it relates to the issue of whether the neurogenic bladder is a work related condition. Dr. Zerga found there are no objective findings or diagnoses to confirm that Plaintiff's purportedly neurogenic bladder is attributable to his low-back injury. Accordingly, I find that Plaintiff's neurogenic bladder is not a

work-related condition. The Defendant/ employer shall be relieved of any responsibility for payment of medical expenses related to the bladder condition.

3. Reasonableness and necessity of the following prescription medications: Methadone, Diatriapam[sic], Viagra[sic], Klonopin, Selequel[sic], Lamictal, Latuda, Neurotin, Zyprexa, Prozac.

Adopting the same reasoning as stated above, the undersigned again adopts the opinion(s) of the University evaluators in determining that the above listed prescriptions are not reasonable or necessary for the care and treatment of the Plaintiff's work injury. It is important to note the opinions of the University evaluators are also adopted as it relates to what medications would be reasonable and necessary for plaintiff's treatment. Dr. Allen opines Plaintiff should have a dramatic tapering of numerous medications. He opines Plaintiff will likely require permanent treatment with an antidepressant. Amitriptyline and Cymbalta are choices that are most beneficial for chronic pain. Dr. Allen's opinion with regard to this issue is persuasive and therefore the Defendant/employer will be relieved of the responsibility of payment for Methadone, Diatriapam[sic], Viagra[sic], Klonopin, Selequel[sic], Lamictal, Latuda, Neurotin, Zyprexa, Prozac. However, the Defendant/ employer shall remain responsible for the payment of the antidepressant as suggested by Dr. Allen.

4. Compensability of Beaumont Behavioral Health treatment.

The undersigned agrees with Dr. Granacher's opinion that the multitudes of prescriptions doled out by Beaumont Behavioral Health treatment as well as Plaintiff's other treating physician's is shocking. It appears that some of the prescriptions and their contraindication to other prescriptions could, in fact, be the causative factor regarding some of Plaintiff's symptoms. I find Dr. Zerga and Dr. Allen's opinions are the most persuasive in determining what care Plaintiff needs at the present time and then on a permanent basis. I adopt Dr. Zerga's opinion as to the treatment Plaintiff will need to taper the mass of prescriptions he is currently consuming. Plaintiff shall have the right to determine what health care provider will administer the managed "tapering" of his medications in accordance and compliance with Dr. Zerga's recommendation set out in this Opinion. Should Mr. Jordan fail to inform the defendant/employer what program and provider he has chosen to implement this program, or, if Plaintiff is unwilling or unable to abide by any voluntary program of withdrawal from these addictive drugs, the Defendant/employer shall move for relief from this Order.

Regarding future treatment of the plaintiff, I first note that the right to future medical expenses cannot be foreclosed when there is permanent impairment. KRS 342.020(1) provides in relevant part as follows:

In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the

medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability.

The Kentucky Supreme Court, in FEI Installation vs. Williams, 214 SW3d 313, 318-319 (Ky. 2007), determined the above language entitles an injured worker to reasonable and necessary medical treatment at the time of the injury and thereafter "during disability," and that disability exists for the purposes of KRS 342.020(1) "so long as a work-related injury causes impairment."

Dr. Allen has opined that a certain percentage of Plaintiff's psychological impairment is causally connected to his work injury (2.5% or half of his 5% impairment). Therefore, consistent with this Opinion and Order, the Plaintiff shall complete a Form 113 for the designation of physician to oversee his continued work-related medical treatment. Said treatment shall be consistent with the opinions expressed by Dr. Allen and Dr. Zerga.

The ALJ ordered as follows:

1. The Defendant/employer's motion to reopen is **SUSTAINED** to the extent that is hereby **RELIEVED** of the obligation of providing the treatment for plaintiff's neurogenic bladder condition.

2. The Defendant/employer's motion to reopen is **SUSTAINED** to the extent that the prescriptions Methadone, Diatriapam[sic],

Viagra[sic], Klonopin, Seleguel[sic], Lamictal, Latuda, Neurotin, Zyprexa, Prozac are found to be not reasonable or necessary for the cure and relief of the plaintiff's work injury. The Defendant/employer is **ABSOLVED** from the responsibility of payment same.

3. The Defendant/employer's motion to reopen is **SUSTAINED** to the extent that the treatment by Beaumont Behavioral Health is not reasonable or necessary for the care and treatment of Mr. Jordan's work injury. The Defendant/employer is **ABSOLVED** from the responsibility of payment same.

4. The Defendant/employer shall be responsible for the payment of the treatment to taper and/or wean Plaintiff from the above-referenced addictive narcotics all in compliance with Dr. Zerga's recommendations and the specific directions of the undersigned.

Because Jordan is proceeding *pro se*, we will attempt to explain the fundamental legal principles controlling how this Board must decide an appeal. Under Kentucky's workers' compensation system, the ALJ functions as both judge and jury. When performing the duties of a jury, the ALJ is commonly referred to as the "fact-finder." As fact-finder, the ALJ reviews the evidence submitted by the parties and decides which testimony from the various witnesses is more credible and best represents the truth of the matter or matters in dispute. The ALJ, as

judge, then applies the law to the facts as he determines them to be true. As a matter of law, the facts as decided by the ALJ cannot be disturbed on appeal by this Board so long as there is some substantial evidence of record to support the ALJ's decision. See KRS 342.285(1); Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Although we understand Jordan is frustrated at the outcome of his claim, we also recognize the difficulty of the ALJ's job as fact-finder. As a rule, in every worker's compensation claim, both sides resolutely contend they have presented evidence of "the truth" concerning those matters at issue. It is for this very reason in cases where the evidence is conflicting, the facts concerning an issue as determined by the ALJ are afforded vast deference as a matter of law on appellate review.

In a post-award medical fee dispute, the employer bears both the burden of going forward and the burden of proving the contested treatment or expenses are unreasonable or unnecessary. National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979); Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997); Mitee Enterprises vs. Yates, 865 S.W.2d 654 (Ky. 1993); Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993). The claimant, however, bears the burden of

proving work-relatedness. See Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997).

Because Jordan was unsuccessful in demonstrating ongoing treatment related to his neurogenic bladder with Dr. Terrell was caused by the work-related injury, the question on appeal is whether the evidence is so overwhelming, upon consideration of the whole record, as to compel a finding in her favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is defined as evidence so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). Conversely, because EKP was successful in demonstrating the contested prescriptions are neither reasonable nor necessary for the cure and relief of Jordan's work injury, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the

evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, supra. An injured worker's right to medical care for a work-related injury is not unfettered. The ALJ has the right and obligation to determine the compensability of medical treatment based upon the evidence presented. In this case, the ALJ found the contested treatment to be unrelated, unreasonable or unnecessary, and therefore non-compensable.

In addition, KRS 342.315(2) generally requires presumptive weight to be afforded the clinical findings and opinions of the university evaluator. However, the ALJ has

the discretion to reject such testimony where it is determined the presumption has been overcome by other evidence. Here, she expressly states her reasons for doing so within the body of her decision. Bullock v. Goodwill Coal Co., 214 S.W.3d 890, 891 (Ky. 2007); Morrison v. Home Depot, 197 S.W.3d 531, 534 (Ky. 2006); Magic Coal Co. v. Fox, supra. Whether a party overcomes the presumption established pursuant to KRS 342.315(2) is not an issue of law, but rather a question of fact at all times subject to the ALJ's discretion as fact-finder to pick and choose from the evidence. Magic Coal Co. v. Fox, supra.

With that said, we believe the ALJ's finding Jordan's neurogenic bladder condition is unrelated to his work injury is supported by substantial evidence and no contrary result is compelled. The ALJ specifically relied upon the opinion of Dr. Zerga, a university evaluator, who concluded Jordan's work injury would not have caused trauma to the nerves at the bottom of the spine leading to the neurogenic bladder. Dr. Zerga also noted there were no objective findings establishing the low back injury caused Jordan's neurogenic bladder condition. It was the ALJ's prerogative to accept Dr. Zerga's opinion and her decision will not be disturbed on appeal. His opinion alone constitutes substantial evidence and a contrary result is

not compelled. Regardless, the ALJ's decision is also supported by the opinions of Drs. Travis and Ballard.

Likewise, the ALJ relied upon both university evaluators in determining neither the treatment by Beaumont Behavioral Health nor the contested prescription medications are reasonable or necessary for the care and treatment of Jordan's work injury. The opinions of Drs. Zerga and Allen were afforded presumptive weight pursuant to KRS 342.315(2) by the ALJ and again her decision will not be disturbed. Similarly, we find the ALJ's reliance upon Dr. Allen regarding the medications reasonable and necessary for plaintiff's treatment is supported by substantial evidence.

Finally, EKP has filed a motion to strike "Petitioner's response of Defendant Breif (sic)." EKP states in its respondent's brief, it addressed the issues of substantial evidence and failure by Jordan to name an indispensable party in his appeal. EKP argues CR 76.12(4)(e) requires reply briefs be confined to points raised in the briefs to which they are addressed and shall not reiterate arguments already presented. EKP argues Jordan's reply brief should be stricken since it reiterates the same elements of proof he addressed in his Petitioner's brief and impermissibly attached documents.

Accordingly, the opinion and order rendered May 24, 2013 by Hon. Jeanie Owen Miller, Administrative Law Judge is hereby **AFFIRMED**.

We agree with EKP that the statements and attachments found in Jordan's reply brief are new evidence which cannot be considered by this Board. Therefore, **IT IS HEREBY ORDERED AND ADJUDGED** the motion of EKP to strike the reply brief filed by Jordan is **GRANTED** and said reply brief shall be **STRICKEN FROM THE RECORD**.

ALL CONCUR.

MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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